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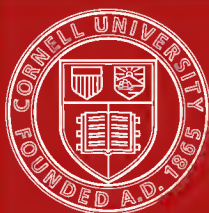
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RAILROAD COMMISSION.

Mr. Speaker: The bill now before the House is perhaps the most important that will claim the attention of this body. If enacted into a law it will, in my opinion, bring more good results to the people of the State than any law that has ever been placed upon the statute books of our State. As the representatives of the people we should deal with it in a spirit of fairness towards those who oppose it, and of candor to ourselves. In this government of ours the interests of each and all are dependent upon each other so that no serious injury can be inflicted upon any one important interest without being felt sooner or later by all. Interest then, not to consider that patriotism which should actuate us, would dictate that we should look well to the preservation and protection of the true interests of the railroads of the State. But at the same time justice demands that the best interests of the great masses of the people shall be preserved as well. Both can be secured by just measures and can not be permanently secured to either by any but just laws.

With the desire to arrive at the truth of the issue involved in this measure I shall, on behalf of the friends of the bill, proceed in my humble way to examine into the objections that are interposed to its passage. This appears to me to be the best way to reach the merits of the controversy.

I would first warn the friends of the commission bill, as we term it, to beware of the tactics that have heretofore defeated this measure. While I concede to our opponents candor and conscientiousness in their opposition, I expect that they will resort to the same or similar means to defeat this bill as have been so successful heretofore. If some friend of the people shall rise up with a bill that is plausible upon its face, and offer it as a substitute for this, as was the case when the noted engineer bill slipped in between the railroads and the people, you need not be surprised, and if it should so be, you will find that the substitute will be an empty egg shell, as was the engineer bill itself. If we expect to succeed we must stand solidly together and be ready to make some concessions if need be in order to achieve a victory that I believe will be the greatest that has ever been won in the legislative halls of this State.

It is proposed by this measure to create a railway commission for the State of Texas, which shall have the authority to fix and regulate the freight charges on the railroads in this State, to prevent extortion, and discrimination, and to enforce the laws of Texas by prosecutions in the courts of the country. The bill demands no more of the railroads than is just. Not one of its demands has been characterized as unjust. It provides the means by which obedience can and will be enforced. It is just and conservative in its requirements, and it is strong and effective in its provisions for enforcement. This is as it should be.

This is not a new measure; it has more than once been under investigation in the Legislature of Texas. I am therefore justifiable in anticipating the arguments that will be used in opposition, for they have become familiar by frequent use. I am the more justified because the same objections have been lately reiterated in the hearing of the members of this Legislature.

It is claimed that the bill is obnoxious to the Constitution of the State of Texas, and therefore if it should be passed would be void in so

far as it confers power upon the commission to fix the rates of freight charges upon railroads. If this be true we should not pass the bill for it would result in no good to the people. The claim that it is contrary to the Constitution is based upon three distinct grounds as follows: 1. To fix the rates of charges is a legislative power that cannot be delegated by the Legislature to a commission. 2. The Constitution enjoins it upon the Legislature to fix maximum rates, and therefore the power cannot be conferred upon the commission. 3. That all the railroads that were built prior to the adoption of the Constitution of 1876 had a vested right to charge certain rates of freights, which could not then be taken from them and can not now be taken from them. If either of these propositions be correct the bill should not pass.

It is a principle of our Government which lies at its foundation that the sovereign power resides with the people, and that the Legislature of a State may do anything, that is within the purview of legislation unless it be inhibited by the Constitution of the State. It is likewise a well settled principle that the Legislature cannot confer upon any other person or body legislative power. It therefore becomes important to ascertain whether or not the power to fix freight charges is legislative in its character, and such as cannot be delegated. If the subject of fixing rates was not mentioned in our Constitution, the same power would reside in the Legislature as does now. If it be legislative power such as could not be delegated, the same rule would apply to such Constitution. We will therefore examine the subject without reference to the particular clauses of our Constitution, and will find that, with a Constitution silent on the subject, the Legislature would unquestionably have the right to delegate the power to a commission. This is settled in a line of decisions that is unbroken. I hold in my hand the fifth volume of the Federal Reporter, which contains a decision made by Justice Woods of the Supreme Court of the United States in the case of Tilley v. S. F. & Western Railroad Company, page 641, in which this question was made, and it was decided that it was not such legislative power as could not be delegated. Also in the case of the Georgia Railroad & Banking Company v. Smith, 70 Georgia, page 694, the same doctrine is asserted. Indeed, in many cases has this question been presented in the same form to the Supreme Court of the United States and of the several States, and I undertake to say that the opposition will not and cannot produce one case in which it has ever been held that the power could not be conferred upon a commission. I call upon the gentlemen who will reply to me to produce one case in which the grant of such power has been held to be void. I may then safely assume that if no case exists holding the contrary, the production of two out of the mass of decisions to sustain my position will be satisfactory.

I presume that no gentlemen upon this floor will be heard to say that if you strike from the Constitution, section 2, of article 10, this Legislature would not have the right to create the commission and clothe it with all the powers that are conferred upon it by this bill. In order to determine the proper construction of this section we must look to all parts of the Constitution, and ascertain what the policy established by it is in reference to railroads. Section 2, article 10, in its first sentence, reads thus: "Railroads heretofore constructed, or that may hereafter be constructed in this State are hereby declared to be public highways, and railroad companies common carriers." Section 3, article 12, of the Constitution, is as follows: "The right to authorize and regulate freight, tolls, wharfage, or fares levied and collected, or pro-

posed to be levied and collected by individuals, companies, or corporations for the use of highways, landings, wharfs, bridges and ferries devoted to public use has never been, and shall never be relinquished or abandoned by the State, but shall always be under legislative control and depend upon legislative authority. Here we have a clear and distinct statement in the Constitution that the power to regulate freight upon public highways resides in the Legislature, and also another distinct statement that railroads are public highways; therefore, the power to regulate freights on railroads is clearly expressed in this section. We have seen that if the power is given in the Constitution, or if there is no restriction, the Legislature may delegate it to a commission as provided for in this bill. If then the section 2, article 10, after its first sentence were blotted out of the Constitution there could be no dispute of the right to enact this law. The effect of the section 2, referred to upon the other power granted becomes an important subject of inquiry, and we must consider it upon the principles of Constitutional construction that are well established. Does the language used as follows: "The Legislature shall pass laws to correct abuse and prevent unjust discrimination and extortion in the rates of freight and passenger tariff on the different railroads in this State, and shall from time to time, pass laws establishing reasonable maximum rates and charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties," limit or destroy the power given in article 12, section 3? We must remember that without this language the Legislature had all the power expressly in it, and there is not a word that indicates that any power is being granted or reserved to the Legislature. It is simply the language of command, which says to the Legislature that you must exercise the much of your power over railroads. A limitation upon legislative authority must be expressed in prohibitory words used, must be implied from the language used expressing one thing definitely as to exclude all others. This language does neither. It in no way prohibits the exercise of the power residing in the Legislature, and which is expressly stated in section 3, article 12. The grant of power to a Legislature carries with it the right to use all means necessary to the exercise of the power, and it is not to be supposed that the convention intended by this section to limit the general power expressed in section 3, article 12. Both articles and sections must stand and be construed together, and not be made to destroy each other. Suppose that the Legislature should pass the bill now under discussion, which is fully authorized by section 3, article 12, but should not pass any laws establishing the maximum rates of freight, would it be contended that the act authorized by one section of the Constitution is rendered void because the Legislature did not obey the command embraced in section 2, article 10? Examination will show that section 3, article 12, refers to the subject of this bill, for it in terms empowers the Legislature to regulate freights for the use of highway and railroads are the only highways to which the regulation of freight could apply. We might rest upon this section alone for the constitutional authority to enact this law.

Let us, however, examine the question as if the Legislature was dependent upon section 2, article 10, of the Constitution, for authority to enact the law and see if that will not sustain the bill. It is claimed that the language of the Constitution enjoins upon the Legislature the duty of "establishing reasonable maximum rates" in the law passed, and does not say that you can empower a commission to do this.

order to ascertain what is the proper construction of this language we must consider the thing to be done. Is it reasonable to suppose that the convention expected that the Legislature would classify and arrange schedules of freight and establish maximum rates for each and every class? It is a work that varies with the peculiar circumstances of each railroad, and with the varying season, and requires the constant care of the officials of the railroads. Could it be expected that the Legislature at its biennial sessions would be able to accomplish this work? I think that no such construction could be reasonably placed upon this language, but that such means as might be necessary could be used to accomplish the work under the laws made by this body. Fortunately we are not without a precedent in this matter. The Constitution of the State of Georgia is so similar to our own that a decision construing it is of great value. The language of that Constitution is as follows: "The power and authority of regulating railroad freights and passenger tariff, preventing unjust discrimination, and requiring reasonable and just rates of freight and passenger tariff are hereby conferred upon the General Assembly, whose duty it shall be to pass laws from time to time, to regulate freight and passenger tariff, to prohibit unjust discrimination on the various railroads of the State, and to prohibit said roads from charging other than just and reasonable rates, and enforce the same by adequate penalties." The difference in these provisions consists solely in the use of the word regulate in the Georgia Constitution, and the word establish in that of Texas. As applied to this subject there is not any material difference. The word "regulate," as used in the Georgia Constitution, means necessarily the same as the word "establishing" as used in ours, for the reason that the subject of freights is not susceptible of regulation except by making and unmaking them, establishing and changing them, which embraces all that is expressed in our Constitution on the subject. A construction of the Georgia Constitution is therefore in point as authority. In the case of the Georgia Railroad and Banking Co. v. Smith, 70 Georgia, 694, the Supreme Court of that State held that under that clause the Legislature had the right to delegate the power to a commission. The same was decided by Judge Woods in Tilley v. S. F. & Western Railroad Company, 60 Federal Reporter. The question was directly presented, and there it was contended, as here, that the Legislature must regulate the freights by the law passed. The railroads in both cases claimed that they had the right under their charters to collect a rate of freight higher than that fixed by the commission, but the court held in each case that the delegation of the authority was constitutional and valid. These opinions are both able and elaborate, and I will again predict that those who will argue against this position will not be able to bring a single case in which the contrary doctrine has been held by any court. The Illinois Constitution contains a provision similar to ours, and the Supreme Court of that State, in People v. Harper, 91 Illinois, 357, sustained a law delegating like power.

If the power to establish freight rates can not be delegated to commissioners it can not be delegated to any other person or corporation. Railroads are created by law and have no power except what is given by their charters or general law. Then I would ask the gentlemen who will appear against this bill to tell this House whence the officers of the railroad companies derive their authority to establish rates of freight, if it is not from the Legislature. They have no natural right to do so. Under a law which fixes only the maximum of fifty cents, these railroad officials proceed to arrange the freights into classes and

affix the rates to each class. This is done by legislative authority, and we have not heard any of those who oppose us say that such law is not constitutional, or that the power conferred upon railroad officials is legislative in character. We must remember that these officials are interested parties—interested against the people—while the commission is composed of persons disinterested. According to the argument, it is within the power of the Legislature to confer the authority to establish rates upon an interested party, and the very party that the Constitution enjoins upon the Legislature to prevent from practicing extortion and discrimination, but it is not constitutional to confer the same power or authority upon disinterested persons who would protect the people as the Constitution enjoins upon us to secure by just laws. Such can not be a proper construction of our Constitution.

To state the proposition again: If it was constitutional for the Legislature to fix and establish a maximum rate of fifty cents and empower the railroad officials to establish all other rates, how can it be unconstitutional for the Legislature to establish a maximum rate of thirty cents and empower the commission to establish the other rates? I hope that some gentleman will show how this can be.

The Constitution of the United States empowers Congress to establish post roads and post offices. Is it expected that Congress will, in the law passed in pursuance of that power, designate the roads or name the offices. It would be utterly impracticable, and yet far more practical than for this body to properly classify all the property to be transported on railroads in Texas and establish maximum rates for each class. Congress executes the power conferred upon it by the enactment of laws laying down the general rules for the establishment of the post roads and offices and delegates to the proper officers the authority to make rules and regulations to carry the law into effect. So do we in this bill, define the duties of the commission, and guard the rights of all, giving the authority to make the rules that are necessary to carry the law into execution.

Your Supreme Court makes rules to govern the procedure of your courts in which the lives and property of the citizen are involved. We have not heard this questioned as being contrary to the Constitution. Your Comptroller makes rules and regulations for the assessment and collection of your taxes, a very important matter. It has not been questioned that I know of as being contrary to the Constitution.

This constitutional difficulty is a wonderful one. It applies when it suits the interest of the corporations and it is not at all applicable when the interest of the masses is to be protected. The Legislature can, constitutionally, empower railroad officials to establish their own rates of charges, under which they combine with foreign corporations to fix our local rates, thereby enriching themselves and extorting large sums of money from the people contrary to the Constitution itself. But the same Legislature under the same Constitution can not empower a commission to establish such rates as will prevent extortion and discrimination and thereby protect the people as the Constitution commands. Verily this logic is incomprehensible.

This Constitution has been in force for more than twelve years and we have never heard one of these constitutional objectors interpose when the Legislature was about to turn the people over to the tender mercies of the corporations to fix the rates to be charged to them. It has always happened that when the proposition is made to introduce a disinterested party into the affair by which the rates will be made in the interest of all, the people and the railroads,

Again it is claimed that the railroads that were constructed after 1853, and before the repeal of the law of that date acquired vested rights to charge freights sufficient to pay at least twelve per cent on their stock. If stock is to be considered as the money invested by the stockholders then twelve per cent upon it would be represented by 0. I suppose that there is no one so innocent as to believe that any stockholder now has a dollar invested in the road, except in the bonds that he has bought. The stock is used for voting purposes and to consume and appropriate any surplus after paying interest on the bonds if such thing should ever happen. For the argument made by Governor Brown I have a high regard, so far as the source is concerned, but it is certainly novel as a legal production. The act of 1853 upon which he relies enacts in substance that the Legislature shall have the right at all times to regulate the freight charges upon the railroads in Texas. A proviso attached says that it shall not be done except each ten years and not then unless the net earnings of the road is equal to twelve per cent upon the stock. There is a direct conflict between the body of the act and the proviso, and it is a principle of statutory construction that a proviso which is repugnant to the body of the act is void. Therefore the law must stand by which the Legislature reserved this right. In the case of the G. R. R. & B. Co. v. Smith, Supreme Court Reporter, December 10, 1888, the Supreme Court of the United States says that it would require very strong language to authorize a construction that the Legislature intended thus to bind all future Legislatures. One Legislature has no power to bind future Legislatures, and if the law of 1853 had been so intended it would not be allowed to do so. But the T. & P. R. R. Co. has no ground upon which to claim any such right. By a special act of the Legislature of 1873 the State granted to it a large body of land upon express agreement that it was to be subject to all laws of this State affecting railroads. (Special Laws 13th Leg., p. 325, sec. 9.) It is said that if the law is constitutional it is unwise to pass it because it will put a stop to all railroad building in Texas. We have always heard this threat of capital withdrawing from the State whenever it is proposed to put any restrictions upon speculation and extortion. I do not fear that capital will withdraw, for I tell you that capital will go wherever it finds profitable investment. It is said that capital is timid. This is one of the false maxims that have grown into common use. It is not always timid but bold and aggressive whenever it holds the reins and conservative and valuable when under control. You need not be alarmed at such threats. If I had the choice to have the railroads remain and be master of the land, or that they should go and the people be free I would prefer to bid farewell to railroads and return to the days of independence and equality. I do not underestimate the benefits of railroads nor do I wish to injure them, but I do value above all the benefits that they have brought or can bring, the exercise of sovereign power by the people to whom it rightfully belongs.

It is said that the shippers do not complain at the rates of freight. Why should they complain? The purchaser of products deducts the freight from the price when he purchases and the seller of goods that are shipped into the State adds the cost to the price when he sells so that each gets his money and the per cent upon it. But the producer and the consumer complain. These constitute the body of the people who are represented here to-day. Will you heed their complaints and right their wrongs, or will you be alarmed by the threats of being abandoned by the railroads and leave them in possession still? I for one am ready to take the step in the direction of rectifying this

We have been told that when we were poor and without the means of transportation, we invited the railroad people into this country to make their investments, and now we are disposed to confiscate their money; that it is ungrateful and unjust. We were not poor, for every man was independent. It is not true that Texas invited the railroads to come. The facts are that some capitalists at Houston and Galveston, with others in other cities saw that this was a goodly land in which to invest in railroad building, and they went before the Legislature and sought to be permitted to build in Texas and in the magnanimity of a great State, we gave them large donations of land to aid them. After having been permitted to enter into our house and having partaken of our hospitality, we are charged by them with ingratitude because we will not move out, and give entire possession. Well, we are a magnanimous and a generous people, a grateful people, but this is requiring more than we can consent to, and by the boldness of the demand we are warned to buckle on the armor for defense of home and right. The stand must be made at this point.

It is said to be unjust because of the fact that the railroads have developed the country and increased its wealth to a great extent. That they have furnished the means of transportation through which the people have been enabled to ship out their productions, and on account of which the population has largely increased is not to be denied. But they are arrogant when they claim for themselves to have accomplished this development. Where is the furrow that they have run, the field that they have fenced, the bale of cotton that they have produced, the bushel of wheat that they have harvested, or of corn that they have cribbed. Where is the house that they have built, outside of depots or the forest that they have felled. No, gentlemen, the men who have dug and delved, plowed and hoed, have developed this country, and they alone can develop it. The railroads were built for the profit of carrying the produce out and bringing in supplies, and they have reaped a rich harvest.

It is said that the railroads have not been able to pay interest on their bonds, nor dividends on their stock, and that they have been forced into the hands of receivers. Why is it so? I will tell you. These roads cost not exceeding fifteen thousand dollars to the mile, but they are bonded for three or four times the amount. Take the Texas & Pacific for example. It has 1125 miles of railroad in Texas, and bonds to the amount of \$50,000,000, and \$38,000,000 stock. This represents a capital of \$88,000,000 invested in 1125 miles of road or, say \$78,200 per mile. Who believes that the road ever cost anything like that amount of money. But in addition to that the State granted to the railroad twenty sections of land to the mile, which has been worth, at least, \$1,000 per section or \$20,000 per mile, making \$108,000 per mile investment in that road. The railroad should have cost, and I believe did cost not more than \$15,000 per mile—\$16,875,000. The interest that should be paid would be not more than \$750 per mile, whereas it is about \$2,222, or about \$1,500 per mile on money that was never invested in Texas. Who pays this interest? The railroad company has no source from which to procure money except from the freight money and passenger tariff paid by the people. It is a tax upon the producers and consumers of the country, who in fact pay the heavy interest charge thus fixed upon the road. We speak of mortgages on the railroads, but they are in fact mortgages on the real estate of this country, for from that they must derive in the main directly or indirectly, the means with which to liquidate the interest.

FOR A RAILWAY COMMISSION.

SPEECH

OF

HON. GEO. W. TYLER

SENATOR FROM BELLI,

IN THE SENATE OF TEXAS,

FEBRUARY 28, 1889.

AUSTIN:

SMITH, HICKS & JONES, STATE PRINTERS.
1889.

SPEECH

OF

SENATOR GEORGE W. TYLER,

FOR A

RAILWAY COMMISSION.

IN SENATE, AUSTIN, February 28, 1889.

The Senate having under consideration the bill known as the
"Railway Commission Bill."

Mr. Tyler said :

MR. PRESIDENT: I realize fully, this morning, the unfortunate circumstances under which any man appears before the Senate in a further discussion of the pending bill. It might well be said that the whole ground has been thoroughly gone over, and that no man in this discussion will be able to present anything new to the attention of Senators. Nor do I presume, Mr. President, that I shall be able to entertain the Senate with an effort at oratory, or to enlighten your minds in the decision of the question now pending before you; but this does not discharge me from a solemn duty which I owe to my constituents, or from a solemn duty which I feel that I owe myself, and to the whole country. It may be that my voice will count for little in this discussion, but that little, whatever it may be, I feel it my duty to render as an humble service in this cause.

I have been struck, gentlemen of the Senate, with one peculiar feature in this argument. I believe I may correctly say that every

speech that has been made against the pending measure has been based upon the assumption, and has proceeded upon the idea that the adoption of the House Commission bill—which it is proposed to substitute for the Senate bill—or the adoption of any similar measure, means the destruction of the railway interests of our State; that these great enterprises are to be torn up by the roots and destroyed, and that these great investments of capital, which have done so much for the development of Texas, are to be stricken down by the hand of the Legislature. I think that this is an unwarranted assumption, that it is a most violent assumption, and I think, gentlemen of the Senate, that it is begging of the whole question in this discussion. The friends of this bill are the friends of railway development in Texas. The friends of this bill are the friends of capital and labor alike in Texas. They are the friends of every enterprise and every movement which will tend to develop the vast resources of our State. Speaking for myself, Mr. President, I assure the Senators that I come here with no violent prejudice against the railroads, but I come in the most friendly spirit, and with the most friendly feelings towards those great agencies of development in our country. I believe sincerely that the railroads have done as much, or more, than any other instrumentality to develop Texas and bring her to her present stage of greatness and prosperity, but none the less do I argue that the railroads are subject to regulation, as is every other interest in our State.

Another feature of this discussion to which I desire to call attention is that gentlemen of the opposition seem to stand upon the broad proposition that because they can not support this bill, with all of its details and all of its provisions, therefore we must have no railroad legislation whatever. I will except from this statement the Senator from Fayette (Mr. Lane), who himself has a bill before the Senate, making classifications and fixing the maximum freight rate on each class of freight. I desired at the outset, and in the beginning of this discussion, to hear Senators from the other side say that if the details of this bill were not satisfactory to them, they were willing to strike hands with the friends of the bill, perfect the measure and give the people the relief that they desire; but I have listened in vain for any such a proposition, except from the Senator from Fayette; and the opposition to the pending measure seems to be aimed as a death blow at every sort of legislation in the

interest of the people as against the exactions of railway corporations. That seems to be the bent of the opposition to this bill. If this bill is not a proper bill; if its terms are not such as we have a right to pass; or if opposition to it arises from views of expediency, why not join hands with us, help us to perfect the bill, amend it, and strike out its obnoxious provisions, but still stand on the general principles it involves? And I want to say right here that I am not wedded personally to all of the details of either the House bill or the Senate bill, but am opposed to a number of provisions in each of them. I presume there is no man upon the floor of the Senate or of the House who is absolutely tied by his conscience to all the details of either of these bills, but it seems to me that the general principle involved is one that should command the attention and favorable consideration of every member of the Legislature. I speak of the general idea that is involved in this legislation, and I am willing to aid you in striking out the obnoxious features of the bill.

What is the proposition? What is the question now before Senators? The proposition in this bill, Mr. President, is to substitute a Commission of three disinterested, impartial, intelligent and patriotic citizens of Texas for the Texas Traffic Association, or its successor, the International Traffic Association—both of which associations are dominated and controlled by the *ipse dixit* of one man. The railway people seem to take it for granted that the Commission will act unjustly and oppressively. What reason is there for such a presumption? On the other hand, legislatures and courts will and ought to presume that the government officers will act justly and impartially, and when the contrary is shown they will be removed promptly under the provisions of this bill, as well as under the general laws of the State relating to public officers.

It seems to be taken for granted that the Commissioners provided for in this bill would go at the work of oppression and destruction immediately upon taking their oaths of office, when, according to my understanding of the very object and purpose of government and of the spirit which should pervade the discharge of official duty, justice and impartiality would characterize the conduct of the Commissioners.

I will devote a few moments, Mr. President, to the trite question

of the constitutionality of this bill ; and, in doing so, I will assume that Senators have made up their minds upon this question, and hence I do not come before you with a great array of legal authorities, but simply to present my views in the light of all the authorities and decisions of the courts which have heretofore been presented in this discussion.

One of the arguments is that this bill is a delegation of legislative power. I deny the proposition. This exact question was raised in the argument before Judge Brewer in the Iowa case, which has already been exhaustively discussed, but there are some expressions in the opinion of the learned judge in that case to which I desire at this time to call your attention. The proposition was made by counsel in that case that the Commission law of Iowa was a delegation of legislative power, and in that argument, you will remember, they were speaking upon the direct point of *fixing maximum freight charges*. Discussing this question Judge Brewer said :

“ By section 17 the railroad commissioners are required to make a schedule of reasonable and maximum rates, and such schedule is declared to be *prima facie* evidence that the rates therein charged are reasonable and just maximum rates and charges for transportation, etc., in all suits brought against the railroad corporations. * * * * *

There is no inherent vice in such a delegation of power ; nothing in the nature of things which would prevent the State, by constitutional enactment at least, from entrusting these powers to such a board ; and nothing in such constitutional action which would invade any rights guaranteed by the federal constitution. So, after all, the question is one more of form than of substance. The vital question with both shipper and carrier is that the rates shall be just and reasonable, and not by what body they should be put in force. While in a general sense, following the language of the Supreme Court, it must be conceded that the power to fix rates is legislative, yet the line of demarkation between legislative and administrative functions is not always easily discerned. The one runs into the other. The law books are full of statutes unquestionably valid, in which the legislature has been content to simply establish rules and principles, leaving execution and details to

other officers. Here it has declared that rates shall be reasonable and just and committed what is, partially at least, the mere administration of that law to the railroad commissioners. Suppose, instead of a general declaration that rates should be reasonable and just, it had ordered that the rates should be so fixed as to secure to the carrier above the cost of carriage three per cent on the money invested in the means of transportation, and then committed to the board of railroad commissioners the fixing of a schedule to carry this rule into effect, would not the functions thus vested in such a board be strictly administrative? While, of course, the cases are not exactly parallel, yet the illustration suggests how closely administrative functions press upon legislative power, and enforce the conviction that that which partakes so largely of mere administration should not hastily be declared an unconstitutional delegation of legislative power."

Judge Brewer further said that "the reasonableness of a rate changes with the changed condition of circumstances. That which would be fair and reasonable to-day, six months or a year hence may be either too high or too low. The Legislature convenes only at stated periods; in this State once in two years. Justice will be more likely done if this power of fixing rates is vested in a body of continual session than if left with one meeting only at stated and long intervals. Such a power can change rates at any time and thus meet the changing conditions of circumstances. While, of course, the argument from inconvenience can not be pushed too far, yet it is certainly a matter of inquiry whether in the increasing complexity of our civilization, our social and business relations, the power of the Legislature to give increased extent to administrative functions must not be recognized."

That principle of flexibility is violated by the proposition involved in the bill of my friend the Senator from Fayette, wherein he assumes that the Legislature can fix a permanent rate of freight charges throughout the State of Texas upon all of the roads. And I think that the reasoning of Judge Brewer is one of the strongest arguments against the proposition that the Legislature shall fix an arbitrary, unchangable rate, and why we should relegate this power to a commission who would be governed by the changing circumstances that might arise, and do justice in all cases, which we

would, perhaps, be powerless to do if we fix the rates; because we meet only once in two years and then we are not sufficiently informed on the subject of freights.

But great stress is laid upon the fact that Judge Cooley, in his work upon Constitutional Limitations, takes high ground, as he ought to do, and as every constitutional lawyer ought to do, against the delegation of the powers of the Legislature to any tribunal or any extraneous board. It seems to me that in referring to this the gentlemen failed to make a correct distinction. They failed to make a proper definition of "legislative power." As I understand the Constitution of Texas, the constitution of all the States and the Constitution of the United States, they simply divide the powers of the government into three departments. We have the executive department administered by the Governor and the heads of departments; we have the judicial department, which is represented by the courts, supreme and inferior, throughout the State; we have the legislative department, which is represented by the Senate and House of Representatives. The enactment of laws for the State and the inauguration of the policy of the State is remanded to the legislative department. Now, does this division of the powers of government mean that the legislature may not create a tribunal, may not create a commission, may not create a board, may not create a committee—whatever you may be pleased to term it? Does it mean that we can not create a tribunal and empower it to discharge certain functions which might at first seem to belong to the legislative department? Certainly not; and to show that I am correct in this position let me cite Senators to the fact that scarcely a day has passed over our heads since we have occupied our seats upon the floor of this Senate in which we have not delegated, in some form, power to the various boards and tribunals of the State. Is not your statute law filled with such delegations of legislative power? Does not your statute in relation to the penitentiary teem from the beginning to the end with delegations of legislative power? Do you not now authorize the penitentiary board to enact laws, or, if you prefer a different name, to adopt "rules and regulations" for the government and conduct of the penitentiary system of the State? The same applies to the reformatory. A bill now pending before the Senate and House incorporates many features of the law of 1887 and reenacts those provisions by which the board of government of the

reformatory is empowered to make certain rules and regulations for the government and conduct of that institution. It is still within our memory that the legislature delegated its power over the public lands of our State by creating a land board, and while that land board has gone into history as an unfortunate invention of the Legislature, I have never heard the objection that it was a delegation of legislative power raised against the creation of that board. The objection was upon other grounds. So with your asylums for the insane, for the blind and for the deaf and dumb; so with the agricultural and mechanical college; so with the university and your normal schools. All of these institutions are governed by boards which you have created. Change the name and call them *commissions*, and you have your delegation of legislative power. You have delegated to them the authority to make rules and regulations and to adopt propositions which involve the exercise of legislative functions. I could speak for hours before you this morning and read in our statute books page after page, chapter after chapter, and volume after volume wherein you have delegated at least as great power to other boards and tribunals in your State. I make the bold proposition that you are powerless to maintain a government without some such a delegation of power. I say that without some such a delegation of legislative functions, under which you create boards to represent you in the administration of the various departments of your government, it would require two legislatures, in continuous session to discharge these duties to the country and to administer the various institutions of our State. It arises from the very necessities of the country, from the very growth and greatness of our vast and teeming interests, that we must create tribunals to sit in the vacation of the Legislature, and to administer the functions which might otherwise belong to our body.

I simply say, Senators, that this question of the delegation of legislative power amounts to absolutely nothing. It is the difference between tweedledee and tweedledum, and you can argue it until doomsday and that is all there is in it. And I want to say on behalf of myself, that in the discussion of this question on former occasions, and when I appeared before my constituents in the campaign and was asked my views on this question, I expressly reserved to myself the right to pass upon the constitutionality of these measures, because at that time I thought perhaps there was

something in this question of the delegation of legislative power; and if I saw proper now to take that side of the question I have the easiest getting out place, perhaps, of any man upon the floor of the Senate. But candor and honesty compel me to admit that the more I have studied the question the stronger has become my conviction that there is nothing in it.

The Constitution of Texas has been paraded very extensively in this discussion, and I desire to advert to it briefly. Article 10, section 2, reads as follows:

“Railroads heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and railroad companies common carriers. The Legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State; and shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties.”

Now we are told in this discussion that when the Constitution says we shall from time to time pass laws establishing reasonable maximum rates, it means reasonable maximum rates of *freight*, not one rate of freight, but *rates* of freight. I say, gentlemen of the Senate, that position is what we denominate at the bar a special pleading. What does the word “rates” refer to? It is used twice in this same sentence, and each time it precedes the words “passenger and freight,” and I hold with all candor before you this morning that the plural of the word is used to include *passenger* and *freight*. It does not mean one passenger rate; it does not mean all passenger rates; it does not mean all freight rates, but it means a maximum rate *for freight and for passengers*. That construction is just as reasonable on the face of the language used in the Constitution as any other that can be insisted upon. It does not stop with saying the rates of freight, but the rates of freight and passenger tariffs, both. It means that the legislative function shall extend to fixing a *maximum rate*, not only for freight, not only for passengers, but for *freight and passengers both*. That is what the Constitution means, and that is the construction

that has been given to this language whenever the question has been before the courts of other States.

This article of the Constitution was not made unadvisedly. I am informed by the history of current events, and it has frequently been asserted upon this floor without dispute, that this article of the Constitution was copied from that of the State of Illinois, and that the delegates who composed the Constitutional Convention of 1875 had in view the very purpose of requiring the Legislature to pass the laws that were then being enacted by the Legislature of Illinois; and the Illinois Legislature did what we are trying to do to-day. It fixed the maximum rate of freight tariff and relegated the duty of fixing the other rates to the commissioners created under its laws. These laws have never been assailed as unconstitutional so far as that provision is concerned. No counsel has ever made the point that the statute of Illinois, by which the maximum rate of freight was fixed and the balance of the duty relegated to commissioners, was unconstitutional. No such argument has been adduced on the other side of this question, and it can not be. It has gone without question, and it remained for this Legislature, and the opponents of railroad regulation in Texas, to originate the proposition that the word "rates" as used in the Constitution meant *rates of freight* instead of referring to the two classes, *freight and passenger*.

Now I hold, to be brief about this matter, that when we have fixed a maximum rate of freight we have performed our full duty. We know that we have already a law fixing the maximum rate of three cents per mile on passenger traffic. The bill now before us fixes the maximum rate of freight of the first class for the first hundred miles at thirty cents per hundred pounds, and it seems to me that when we have done that we have discharged our full constitutional duty.

Mr. Lane—Will the Senator from Bell yield to a question?

Mr. Tyler—Certainly.

Mr. Lane—Has not the Legislature heretofore fixed more than one maximum rate for passengers? Has it not fixed a maximum rate for children under ten years of age?

Mr. Tyler—Yes, sir; that is true, but it has never fixed a maximum rate on freights except on freights of the first class for the first hundred miles.

But, suppose I am wrong. Suppose the other construction is correct—that we ought to go through and classify all the freights and fix the maximum rates thereon, as is contemplated in the measure offered by the Senator from Fayette. Suppose that is the true construction; what follows? It follows that every Legislature that has convened since 1876, when this Constitution took effect, has plainly and openly violated the Constitution of the State. So far as I am advised, there has not been any law passed which attempted to fix anything more than the maximum rate on freight of the first class for the first hundred miles. No law going further than that has ever been placed upon the statute books. Attempts have been made, but they have been defeated. Upon that assumption, then, the legislatures from that good day to this have sat here in open violation of the Constitution and of their oaths to support that Constitution, and have failed to obey the immortal “shall” that we find in the Constitution.

Whatever our duty may be under the Constitution, it is mandatory. We can not evade it. We are bound to enact the laws that are there referred to, and with that “shall” staring us in the face, if the views of the opposition are correct, then the Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth and Twentieth Legislatures have stood here in open and plain violation of their oaths and of the Constitution of your State.

I am not willing to accept any such proposition. I believe those bodies were as patriotic as that which is in session to-day, and that they took the same view of this matter that I take this morning, and when they fixed the maximum rate upon freight of the first class they believed, and believed correctly, that they were performing their full constitutional duty, and were acting from a desire to accommodate the investments, the commerce and the railroad traffic of the country to the great and increasing demands of surrounding conditions, and to do justice to all alike.

It does not follow, because a commission might be delegated the power to administer the details of this matter and to fix other rates; that their exercise of this power is therefore exclusive. It does not follow that because we can empower a commission to adjust rates, that the Legislature may not also exercise that power itself. I do not contend that the Legislature has not the power to pass the bill of the Senator from Fayette, but I hold that this power can and

ought to be relegated to a commission, and that they can act with greater wisdom and intelligence in this matter than any member of the Legislature is competent to do. That is the leading proposition of the pending bill.

In regard to the right, upon general principles, of the State to regulate railways, that is not so much a question of law or of constitutionality as it is one of public policy. I draw a great distinction between this character of legislation and those laws which attempt to restrict the free and unlimited action of the individual citizen. It may be known to Senators that I belong to that class who believe that every citizen should be allowed the largest liberty consistent with the public safety, and that I have always opposed and cast my vote against every measure that looked to a restriction of individual action. I am proud to own that I belong to that school of politics. But I make a great distinction between the individual citizen and the corporation. That is a distinction that has not been made by the opponents of this measure. They have assumed that the railroad and the corporation occupied equal ground with the individual citizen. I have no prejudice against railroads, I am now speaking of *all corporations*. They take a corporation by the hand and invite it to a full enjoyment of all the inalienable rights, as they express it, of the individual citizen. I make a broad distinction between the inalienable rights of a being that derives his existence from God on high and of one that owes its creation to an act of the Legislature.

I hold that the principle involved in this legislation lies at the very foundation of the sovereignty of our State. I think when you are met here with the claim of "vested rights" you are thrown back upon the defense of the very sovereignty and integrity of your State. That alone would impel me to my course in this matter, if nothing else. I want to read from Judge Cooley's book,* which he has published for school boys, not for Senators. We are met upon the threshold of this question with the doctrine of "vested rights;" that under the legislative act of 1853 certain privileges and immunities were guaranteed to railway corporations, to associations of men who might build railways into this State, and that that law has become a part of the paramount authority, higher than

*Cooley's "Principles of Constitutional Law."

the Constitution, higher than the Legislature, higher than the people of our State. Judge Cooley says:

“A statute, public or private, is not a contract. It is an expression in due form of the will of the State, as to what shall be the law on the subject covered by it; and the State would be deprived of sovereignty and crippled in the exercise of its essential functions if it were not at liberty to change its laws at discretion.” (p. 302.)

* * * * *

“A State can not by contract bargain away any of the essential powers of sovereignty, so as to deprive itself of the ability to employ them again and again, as the public exigencies shall seem to require.” (p. 304).

When we turn to the Constitution of 1845, under which the act of 1853 was passed, and read Article 7, Section, 31, General Provisions, we find that the old forefathers of Texas had foresight and looked clearly into the distant future upon this question. Even in that early day they realized the great force and power that corporations and aggregated wealth might be able to exercise upon the legislation of succeeding years, and they did not propose by a constitutional provision ever to barter away the sovereign right and integrity of our State. I call your attention to this provision:

“No private corporation shall be created unless the bill creating it shall be passed by two-thirds of both houses of the Legislature; and two-thirds of the Legislature shall have power to revoke and repeal all private corporations, by making compensation for the franchise, and the State shall not be part owner of the stock or property belonging to any corporation.”

That provision was founded in the great wisdom, and in the far-seeing solicitude of the fathers of the Republic.* They did not propose to make the State a party to these enterprises, because it would compromise its dignity, its sovereignty and its integrity. They proposed to keep corporations at arm's length, and let them be, as they were and are, the creatures of legislative power, sub- to legislative restraint, and not become greater than the sovereign itself.

It seems to me, fellow Senators, that when the act of 1853 is pleaded here in support of the claim of vested rights, we ought to turn the light upon that act and examine the question whether that act itself was valid under the Constitution of 1845, which provides that a private corporation shall be created only by a two-thirds vote of the Legislature. I question if any general law, like the act of 1853 purports to be, turning loose upon the country any number of corporations in the exercise of powers claimed to-day, could be valid under the Constitution of 1845.

No State has the power to grant or part with a right which the people may not at their pleasure reclaim—such doctrine would be destructive of the very idea of sovereignty—and all who take a grant or franchise from the State do so subject to the paramount and undisputed right and power of the State to recall or take back the grant in the exercise of its sovereignty. This doctrine does not involve injustice. It is an elementary doctrine that the sovereign can do no wrong, and the State will not reclaim the franchise without doing so in a manner just to all concerned. There is no place here for the dogma of “vested rights,” and the sooner that dogma is eliminated from the discussion of economic questions and is relieved from doing duty for corporate monopoly the sooner will the extremes of sentiment be able to come together upon a common platform, and solve this and similar questions upon the plain principle of business fairness and equity.

The owners of corporate investments greatly mistake the temper of the people in supposing that there is a desire on the part of any respectable number of our citizens to do them injustice or deprive them of a fair and reasonable return on their actual capital. We do not demand that, but we do demand laws alike just to the people and to the companies, and that in the management of this great business, which not only requires the talent of able men and the expenditure of vast sums of money, but which fixes to a great extent the price of products, the rewards of labor and the cost of living in this country and in all countries, the people, the whole people, the rich and the poor, the high and the low, the very humblest of our citizens, may be treated with that fairness, justice and equity of which the representatives of these great corporations so eloquently and earnestly speak. “Equal rights to all and special privileges to none,” is the cardinal doctrine which we invoke to-day.

spurning all sympathy with that spirit which would injure or destroy these great agencies of development and progress.

Corporations, as I said before, are creatures of the law. They derive their existence from the State. It takes an act of the Legislature to create or permit the existence of a corporation in our State, or in any other country or State. With their existence they generally derive great advantages. They obtain the right to sue and be sued, the right to hold property and the right to receive conveyances and to make conveyances. The railroad corporations of Texas exercise, by grant from the State, the right of eminent domain, which belongs alone to the sovereign. Can you take your neighbor's land without his consent at any price? Certainly not. Only the State, the sovereign, can exercise the right of eminent domain, and yet we transfer a portion of that prerogative to the railway corporations of our State in the interest of public policy and in the interests of the public good. On what ground do we do that? Simply because it is a great aggregation of wealth? No. Simply because it is different from any other kind of carrier? No. But because it would be impracticable, impossible for them to construct these great highways unless they had the right of eminent domain, and in the interest of the public good, for the purpose of promoting the public good, and by reason of the obligations which they assume to the public as carriers, to become a part and parcel of the body politic, to be a part of the public itself, to be, in some sense, the public, and represent the public, we transfer to them a portion of the right of eminent domain, which belongs exclusively to the sovereign, the State. If they stand upon the same ground as the individual citizen, if they are possessed of these inalienable individual rights about which Senators speak, why can not you and I, if we saw proper, construct a highway? Why might not we also exercise the right of eminent domain? But you will find that this right is confined exclusively to these railway corporations and those of a similar import, and that it is simply upon the ground that they are a public good and have assumed a public duty. They cannot stand behind the bulwark of personal rights and do as they please, because it is only upon the theory that they are a part of the public that they could exercise these great powers. They do a public business, in which the public

are greatly concerned. And there is more in this statement than there would seem at first blush. With the coming of the railroad every other mode of transportation is abandoned. The ox wagon, the stage coach—all other means of transportation and communication give way before the march of progress and the advance of railroads into the country, and you are dependent upon them to do your transportation and to connect you with the markets of the world. They have the right of eminent domain, which no individual has. They are a part of the public and therefore subject to a reasonable exercise of the police power of the State.

Texas has gone further than this. Texas has done more for her railroads than any other State. Texas has given most of them a princely public domain, upon which they have issued bonds and built their roads to a great extent; and if the right exists in any State of the Union to regulate railways, that right stands upon a higher ground in Texas than in any other State. They can not partake of this public nature, share with the State this public prerogative, and then claim to be strictly private institutions and independent of public supervision.

It is asserted that because the private citizen has a right to attend to his own business in his own way, railway corporations have the same right, and that the State has no right to interfere with them. Such doctrines as these are invoked in this discussion. The Senator from Lamar (Mr. McDonald) speaks of the natural and inalienable right of a common carrier to charge reasonable rates for its services. That doctrine as applied to an individual is cardinal and elementary, and is not disputed. The Senator from Fayette says that common carriers have the natural right to say what they will charge, and instances hack lines, etc. Now, in the first place, if that proposition applies to railways, what right has the Senator from Fayette to indicate what their charges shall be by *his* bill? I tell you that that argument made here, not only by the Senator from Fayette, but by every Senator who has spoken in opposition to the pending measure, would apply with equal force to every other proposition to regulate freight charges. It would deny the power to fix even maximum rates upon the railways of the State, and I say to the Senator from Fayette

that when he makes the argument, and when he so eloquently portrays the condition of the country and undertakes to show that no regulation is necessary, he is rolling up stones against the sepulchral door of his own bill and of every other bill that may be brought forward on this subject. It means that railways shall be turned loose, and be allowed to exercise without any restriction the "inalienable right" of which my friend, the Senator from Lamar, speaks.

I make a great distinction, as I said before, between individuals and corporations. It is known to lawyers here that this doctrine of common carriers, from which these Senators quote and quote correctly, was formulated into a principle of law at a time when there did not exist and had not existed a common carrier under a *corporate franchise* upon the face of God's green earth. It applied to the individual, to the proprietor of the old hack line and go-cart of Old England and Continental Europe, by means of which individuals did the carrying and transportation of the country. So far as I am informed, when that doctrine was formulated into a proposition of law, as we read it to-day, there had never existed a common carrier under a corporate franchise. It was founded, not upon any peculiar right that was vested in the carrier *as a carrier*, but upon the inalienable and God-given right of *man* to do as he pleases with his own, as long as he does not interfere with the right of any one else. It stands upon the doctrine of the inalienable rights of man. And let me remark here that the Declaration of American Independence, that immortal document, clearly defining the inalienable rights of man, never spoke of a railroad or of a corporation. But Mr. Jefferson said that all *men* are born equal, and endowed by their creator—not by the Legislature, but by God on high—with certain inalienable rights. He never said that corporations were endowed by God with any of those rights, because corporations are the creatures of the law. They get the breath of life from the Legislature, and God Almighty had nothing to do with them. I think one of the greatest mistakes in the arguments of the opponents of railway regulation is the failure to make a just distinction between the individual and the corporation. I speak in no unkind tone towards corporations,

because I think they are necessary, that they are great agencies of progress in the development of our country, and I would be the last man to desire that they should be stricken down. Being creatures of the law, as they are, we ought to provide them every proper and legal protection, but the time has not yet come to accord to a corporation the inalienable and God-given rights which are born with a man.

Now, Mr. President, much has been said here in regard to the necessity of this sort of legislation. It is claimed that it is not necessary, that the country is getting along very well, that the railways are doing right, that the people are not suffering any harm at their hands, and that everything is lovely and peaceful and serene. The Senator from Lamar painted in most glowing and eloquent terms the happiness and prosperity of our country. I only wish I could believe that the honorable Senator is not mistaken in this matter. While I do not mean that there is any great oppression, or that the people are going down to the grave in starvation and rags and ruin—I am not here for the purpose of drawing such a picture—still I want to discuss this question in the light of plain, practical, business sense. I have not attempted to ornate or exaggerate anything I have said, and I shall not attempt to do so. In the first place we hear of a great many petitions coming to Senators protesting against this bill, by which, I am led to believe, that some Senators have perhaps changed their position in regard to this measure, or, at least, if they were doubtful, have determined to take a position against the bill, on account of the large number of merchants protesting against it. I want to call attention to some correspondence I have received in relation to this matter. A friend writing to me says :

“Now while petitions as a rule are to be considered as guides, I will say that this is an exception, because of the unequal means of obtaining influence through petitions. The railroad companies have an average of four employes, paid ones, at every station in Texas. They have their instructions and will importune and solicit signers both directly and otherwise. The farmers and masses have no one to present their claims without extra pay or loss of time, like the railroads have. Dozens of the smartest men in Texas are kept at Austin to

preach unconstitutionality and to hatch up every other kind of scare-crow. Then how are we to have a show except through our Senators and Representatives.”

In regard to this matter of petitions, I will state that my district cast nearly 12,000 votes at the last election, and if there was one question upon which they were practically unanimous, it was upon the question of a railway commission bill. It was the expression of nine out of ten men who interviewed me in the campaign. It was on everybody's tongue, it was on the hustings, it was everywhere—it was in the air. As we understood it in that district, the Democratic party was committed in this campaign to a reasonable regulation of railway traffic in this State, and I want to know how Senators are going to evade that issue and go back to their constituents and explain their votes away. But coming, as I do, from a district with 12,000 votes, I have received two protests from merchants against this bill. They comprise forty-eight voters out of 12,000. Should I change? Should I turn my back upon this measure and betray the trust reposed in me by 12,000 honest and intelligent voters of Texas because forty-eight of them have seen proper to sign a protest against this bill? I take it that my district is a pretty fair average of the country. Suppose 500 men had signed such a protest in my district, ought 500 men to overturn the wishes of 12,000.

The Senator from Lamar spoke of the various laws which we now have upon our statute books, which seem to render this sort of legislation unnecessary. I was struck with the force of his argument. I was myself surprised to know that we had so many laws in relation to railroads. Do we need more? I think I can give you the answer by telling a little anecdote that you have all often heard. The old negro version, in explanation of the creation of man, went about this way: “God Almighty made Adam out of a lump of mud and set him up against the fence to dry, and when he got dry the Lord came along and blew the *breath of life* into him,” You have your laws—chapter upon chapter and precept upon precept—telling railroads what to do, but they stand “against the fence,” lifeless things, like Adam was before the Lord blew the *breath of life* into his body. They are lifeless, dormant, useless, and you

might as well enact a law and say to horse thieves, "don't you steal any more, because it is wrong." In order to enforce a law, there must be a tribunal to enforce it; you must give it life and vitality; and to relieve the fears and ease the conscience and souls of those who assume that this bill involves oppression and outrage upon the railroads of the State, I tell you that the very *existence* of this law would of itself almost enforce it. The very existence of this law upon your statute books, and the very fact that there is a tribunal to which the citizen may appeal; that there is a power which, when invoked, will enforce the laws—that of itself would secure to the people fairness and justice in their transactions with the railways of the country.

My friend, the Senator from Lamar, and others have stated, in terms very complimentary and eulogistic of our able Attorney General, in which terms I join most heartily, that that officer will be able to enforce the laws of the State and protect all of our citizens. I must give my friend great credit for his ingenuity in the manner of presenting that argument. I have not seen, if the Senator will pardon me, a more artistic thing done upon the floor of this Senate. He spent, I think, some twenty-five minutes in reading and commenting upon the Attorney General's report, in which he read the *style of cases and abstract of proceedings* set out in each case to show what the Attorney General was doing to protect the people in this matter. I say that it was an ingenious argument, though I doubt not that the report itself is worthy of every encomium which he passed upon it. But let me call his attention to the fact that all the railway litigation on behalf of the State by the Attorney General, as reported in that pamphlet, if put together and one case followed another, would occupy but two pages of printed matter, and "leaded" matter at that. How many cases did he have? *Six cases in two years* were instituted by the Attorney General of Texas for violations of the law, and yet we are told that that officer can stand between the people and the corporations. And what were the nature of those cases? Was there a solitary case against *discrimination*? Does the Attorney General show that during those two years there was instituted a single case for discrimination by a rail-

way corporation or carrier by a County Attorney or District Attorney in this State? Not one. The first case instituted by the Attorney General was against the Sabine and East Texas Railway Company for abandonment. The next case was against the Galveston, Houston and Henderson Railway, to try the title to some school lands, and had nothing to do with the transportation or traffic of the country. The next was against the International and Great Northern Railway, by *quo warranto*, to forfeit its charter and exemption from taxes. That had nothing whatever to do with discrimination or the transportation of the country. The next was to enjoin the Texas Traffic Association. The Senator paid an able tribute to the Attorney General for having driven that body out of the State. While I applaud the Attorney General for his bravery and boldness in that instance, the result, perhaps, was unforeseen by himself; and it may be that if he could recall his action in that case, he would do so. I would prefer, if we have got to have a pool to run the traffic of Texas, to have it upon Texas soil, so that we can reach it by our laws and our courts. The next case was to forfeit the charter of the East Line and Red River railroad. In that case there was defective service. Perhaps the president was in New York and would not come back to Texas to be served with citation. The next was against the Texas and New Orleans Railway, to cause it to keep its office in the State; defective service also in that case.

That comprises the sum total of the litigation to which the Senator from Lamar refers, as evidencing the power and ability of our Attorney General to enforce the laws of your State in relation to railroads. I question whether it has had any effect or any influence whatever upon transportation, upon freight rates, upon discriminations or extortions. I question if the institution of these suits has had one particle of effect upon the questions which are involved in the legislation now proposed. I simply make the broad proposition, fellow Senators, that while we may have laws enough, these laws are not capable of enforcement by the citizens of your State; and my proposition is supported by the very fact that these petitions have come in here from the merchants of the country who have been induced to sign such protests largely because they

believed that if they did not they would be subjected to discriminations and unfair dealing in their transactions with the railroads. Many of them have been virtually forced to sign these petitions. That, of itself, should be the strongest evidence to your minds that they are not going to enforce the laws of your State, and that the citizen will not be protected from discrimination, because, while they might recover in *one suit* they would afterwards be subjected to treatment which might not exactly constitute a cause of action, but which would cause them to suffer by being placed at a disadvantage in their business. I could give you the details of many cases in which merchants have been induced to refrain from prosecution for abuses, simply because, although they had a good case, they were afraid of the future consequences in their dealings with the railroad company.

So the merchants petition and protest against the passage of this bill. But what does it really matter to the merchant what the rates of freight are, if there be no discriminations? What difference does it make to him whether the rates are high or low? All the merchant asks is that he shall secure a freight rate as low as his neighbor, so that he may sell his goods at the same figures. If you and I do business side by side, I do not care what the freight rates are so long as I get them as low as you do and can sell my goods at the same price. Whether high or low it makes no difference, because I tax them up on the cost of the goods, and include them in the selling price. The farmers, the mechanics, the laborers, the lawyers, the doctors—those are the real sufferers—they buy these goods and consume them, pay me back all the freight, and it is immaterial to me whether the rate is high or low.

The shipper is frequently afraid to assert his rights. Members of the Committee on Internal Improvements will perhaps remember that a few days ago when the Lane bill was referred to the committee for investigation, and some traffic managers appeared before that committee and submitted some statistics, after those officials had made their statements, Mr. Blake, a merchant and manufacturer at Dallas, also made some statements before the committee. When he had concluded, did you notice that he turned and stated to the traffic managers

that he knew he ran the risk of incurring the ill-will of the Traffic Association and of the pool of Texas, but notwithstanding that risk, he felt called upon, as a citizen of the State, to come and do his duty in this great transaction. I felt proud of his manhood and courage, but I felt chagrined that any citizen of Texas had to crouch and tremble before the presence of the representatives of corporate power. I mean no reflection upon the gentlemen referred to, perhaps Mr. Blake's apologetic action was uncalled for, but that was the feeling which actuated Mr. Blake, and which actuates the mercantile community throughout the State.

I come to another feature of this question, to which I invite your especial attention. The South-land, to which we are all devoted, whose history is freighted with the memories of many a gallant conflict in behalf of Southern honor and Southern integrity, and before whose sacred altar not a Senator upon this floor would hesitate to fall and worship—in her name I call upon you to-day. The men of the South have been the hewers of wood and drawers of water for many years and they will ever continue to be under the present conditions. The South has always been dominated by the North in commerce and in manufactures. While the Northern Senators and Representatives have been talking of Southern outrages and the negro question, Northern manufacturers have built the Chinese wall of protection around our people, to control their custom and their commerce. I do not desire or propose to treat you to a discussion of the tariff, but merely to cite you to the fact that during the war and after the war, when we were crushed under the foot of the oppressor, they drew around us the iron band of commerce in such a manner as that it will perhaps take a century to effect our escape. The doctrine of protection has become so strongly imbedded in the Northern mind that, as we learned from the experience of the last campaign, it will perhaps be the controlling dogma of this country for many years. Protection, what does it mean? It means that we must not have factories in our own State, that we shall not have the benefit of competition from foreign countries, that no manufactured goods can be brought upon the bosom of the high seas and landed up the shores of Texas, but that

we must buy them from the manufactories of the North, and that doctrine, perhaps, may prevail when you and I have been laid away in the silent tomb.

The Northern mind naturally looks to the Almighty Dollar, and he has worshipped at its shrine to no little purpose in this country. They engage our Senators and Representatives in great political discussions while their people dominate and control our commerce and trade. One of our Senators from Texas very recently occupied the floor of the Senate for four days in an able refutation of unjust charges made against a certain section of our State. I say all honor to Senator Coke for that able defense of Texas; but, what do these discussions mean? Why are they precipitated upon our Senators and Representatives at Washington? What do they portend for the future? It means that the North will hold their iron bands upon our trade, our custom and our patronage, while we are forced by their political leaders to struggle for the ordinary rights of citizenship and of suffrage. It means that while they are engaged in commerce and manufactures, while they are building their vast manufactories, while they are constructing their railroads and telegraph and telephone and express lines throughout the country, they are engaging our leading minds, not in commerce, but in the maintenance of our political rights.

Texas can not get goods from England, but must buy in Boston, New York, Philadelphia, or other Eastern markets. Look at the freight rates of your country. Through rates are extremely low—local rates extremely high. I come now to the application of the proposition. Can you ever manufacture in Texas? When we talked about reduction of the tariff and were trying to reduce it in the last national campaign, and give our portion of the country an equal chance and let our people buy in foreign competing markets, they asked us, why do you not manufacture in the South and then you would believe in the tariff? I tell you that you never can manufacture in Texas under the present conditions. I would not give ten cents on the dollar for the stock of a manufactory in Texas to-day as an investment. Fort Worth can not manufacture, Dallas can not manufacture, Rusk can not manufacture, New

Birmingham can not manufacture ; it is all nonsense. You can not do it under the present conditions, and why ? Because the business of the country is so organized that the Northern capitalist owns the factory, he owns the telegraph line, he owns the railroad line, and he is going to control the trade and commerce of this country so long as the present conditions continue. He is going to ship his goods on his own railroad, and sell them to our merchants through the medium of messages over his own telegraph line, anywhere in Texas, in competition with the Dallas factory, because through rates are low and local rates are high. However, if the Dallas factory gets in his way he will form a trust or a pool and squeeze the Dallas institution to death. My friend, the Senator from Cherokee (Mr. Morris), and my friend, the Senator from Marion (Mr. Armistead), have in their districts great manufacturing interests and industries in sight, just ahead of them. I appreciate the ambition of those sections of the State and would wish to see their industries built up, but they will never amount to anything unless you secure to them cheap local freight rates, by which the products of their factories can be transported to the consumer in Texas.

It amounts to this, fellow Senators, that the discrimination in through rates in favor of the products of the North, compels the producer, the laborer, the professional man and all classes of citizens in Texas to patronize the factories of the North. You can not expect to build up your factories in the South under these unequal conditions. The only way to do it is to take hold of this freight question and regulate the railways of the country reasonably, justly, fairly and impartially, and adjust these matters so that all of the industries and all of the interests of Texas may be built up together, and not allow railroad interests to be built up at the expense of every other industry.

But it is said that when you get more railroads to your factories the *competition* will give them the needed relief. Not so. One railroad is just as good as a thousand, so far as freight rates are concerned, when you have a traffic association dictated to by one man and he fixes the rates on all of them. Competition is not the solution of the question.

I want to read briefly from an authority which I have here upon this question of railroad development. There is something involved in this question which it seems to me has not been duly considered. We lawyers in the Senate and in the court houses get down our old musty books and blow the dust off of them and read about common carriers and individual and inalienable rights. That is all proper enough in its place, but I believe it has no application here. I read from a work* by Professor Hadley, of Yale College, an eminent authority, which passes among railroad men and all intelligent thinkers of the day. He calls attention in the beginning of his book to the history of railroad development. He says:

“On the fourth of July, 1828, Charles Carroll, last surviving signer of the Declaration of Independence, laid the first rail of the Baltimore and Ohio Railroad. One man's life formed the connecting link between the political revolution of the last century and the industrial revolution of the present. The second reaches wider and deeper than the first. Yet there are few who realize its full importance, or who seriously try to understand it. A new system of commercial and social relations has arisen among us. Small industries and independent workmen are giving place to large factories and factory operatives. We no longer produce for the home market, but for the world's markets. A rapidly increasing share of productive wealth is held by corporations. The men who manage this mass of corporate capital form the sole connecting link between investors, workmen and consumers. The classes become more and more sharply marked. Conflicts of interests arise between them—sometimes apparent, sometimes real—which result in disastrous struggles or in class legislation of the worst type. Yet the majority of men seem indifferent to the real importance of these events. Occasionally they make feeble attempts to resist them. More often they allow themselves to be hurried on in the general movement, without even trying to understand what it means or whither it is leading.

* “Railroad Transportation; Its History and its Laws.” By Arthur T. Hadley, Commissioner of Labor Statistics of the State of Connecticut; Instructor in Political Science in Yale College. 1886.

“Of these changes the railroad is at once an instrument and an example. As a carrier it furnishes the means which has made modern business methods possible. As an organization, it furnishes in itself an extreme type of those methods. No one symptom, in business or in politics, marks the direction of national activity so clearly as does the way in which the transportation system is organized and controlled.”

Is it not within the memory of Senators upon this floor when every little town of five hundred or a thousand inhabitants had its shoemaker, its hatmaker, its tailor, and all of these various pursuits were followed by individual citizens of the community? Such used to be the condition of things throughout the whole country. Have you considered that the occupations of our people are gradually being absorbed by corporate enterprises? The old fellow who used to make boots when you were a boy is now a shoemaker in some great boot and shoe factory, working for five or six dollars a week. The man who used to make our hats is employed as a journeyman in some great hat manufactory in Philadelphia or New York. All of these avocations and occupations have been swallowed up by the aggregation of corporate capital. It is true that with great aggregations of capital and a great number of workmen these articles are made cheaper than they used to be. I am not speaking against this policy, but merely to remind you, fellow Senators, that the laws of trade and commerce have assumed a different condition to that of fifty years ago. They demand a different principle of adjustment, and the application of different laws and a different treatment at our hands, and we should open our eyes to *this* country and *this* age instead of looking into the musty law books of England for the laws governing a former age. Professor Hadley also says :

“Until about 1850 it was assumed that railroad business was subject to the same laws as any other business, and in particular to the so-called law of competition, by whose free action rates would be brought down to the cost of service. It was gradually seen that this assumption was not strictly true; that in many instances it was very far from the truth.”

And so he goes on to discuss the development of the railway traffic of the country and the new conditions, new agencies and new appliances brought to bear in its development. In speaking of the demand for special legislation, he says:

“The investment in a railroad, is owned, almost of necessity, by a corporation. As concerns the users it is almost necessarily a monopoly. Very few points have the benefit of more than one line of road; even at these points it is often easy to come to an agreement. In all these cases competition is not directly felt. When a railroad makes arbitrary rates, whether justified or not, there is no appeal to any controlling influence. The attempt is, therefore, constantly made to bring the railroads under the authority of special legislation. There is no lack of grounds on which to base such special action. Corporate existence in itself renders a certain amount of legal control necessary. Common carriers have from time immemorial been made subject to special responsibility. When a single carrier, or a very few of them, have a virtual monopoly of the whole business, this responsibility needs to be still more strictly enforced. This was the doctrine of the United States Supreme Court in the granger cases (*Munn v. Illinois*, 94 U. S. 113), in which the reserved police power of the State was so strongly asserted. The railroads themselves recognize their peculiar position under the law, in claiming to exercise the right of eminent domain to take land without the owner's consent. If they get the benefit of their character as a ‘public use,’ they must accept the drawbacks which that character involves.

“Finally, the chief practical reason why so much special legislation is directed against railroads, is that we are dealing with a new business, without the benefit of established precedents in its favor. The public is jealous of the railroad power. It will not allow it to manage its business without interference, because it is afraid that it will grow so strong that all interference will be impossible. The public sees no limit to the growing power of corporations, and it regards this growth with a kind of vague fear. This fear is none the less potent because men are at a loss to tell exactly what they are afraid of. It

gives rise to much wild talk, and some ill-judged legislation. These manifestations drive some men to the opposite extreme. Because the fear is vague, they insist that it is groundless. Because the talk is wild, they insist that it is much ado about nothing. Because the legislation is ill-judged, they insist that no legislation is needed. Either extreme is bad. It is not well to be frightened at the growth of corporate power; but it is not well to shut our eyes to the plain fact of the case. Not far from one-quarter of the wealth of the United States is held by trading corporations. It is not improbable that half the permanent business investment of the country is owned in this way. It is certain that not only in the United States, but in the whole civilized world, corporate property is increasing many times faster than other forms of wealth. It is safe to say that amid the many important business changes of the present century this sudden growth of corporations is the most important."

This author estimates the comparative *increases* from 1870 to 1880 as follows: in total wealth of the world ten per cent., in use of machinery forty to fifty per cent.; in railroads seventy-five per cent. He further says:

"So rapid has been the change that men's thoughts have been hardly able to adapt themselves to it; still less has the law been able to keep pace with it. The change has brought evils and dangers previously unknown, and even now imperfectly understood. Against these dangers old safeguards have proved useless; new legislation based on a merely superficial view of the facts has proved worse than useless. If our remedies are to be of any avail they must be based on a thorough understanding of the evils against which they are directed. To understand the evils, we must understand the character of the system, and the causes which have led to its growth." (pp. 40 to 43.)

I merely call your attention to the views of that distinguished writer and thinker of our country in order to awaken in your minds the idea that we are dealing with a new question. A new era has been inaugurated in our country, and we

ought to deal with the questions it presents with the vigor which is demanded by the hour. I do not mean that we should oppress railroads out of existence or reduce their revenue upon traffic so that they will not pay, but I do mean that we should assert the general principle of railroad regulation, because I believe it lies at the very bottom and foundation of the integrity of the government and of the prosperity of the people of our State. We are told by Senators that there is no need for this legislation,* that there is no discrimination, no overcharges, no exactions, no unfairness in the transaction of the railway business of our State; that the railways are doing just exactly what they ought to do, and that we do not need commissioners. If this be true the commission will be harmless, and it will not cost the State anything except the salaries of the commissioners. If the railways are doing what is right, what have they to fear from investigation. If I am doing right, doing what I ought to do, should I object to your turning the light of investigation upon my actions? No, because I have nothing to fear. But on the other hand, if I am not doing right, I would be expected to resist all efforts at investigation; and I think the fact of the giant efforts being made to-day by the railway companies of Texas against this legislation is one of the very strongest arguments why we ought to adopt the general idea of this bill and see whether it will not benefit the people of our State. If it is needless it will at least be harmless, and will cost the State but little; but on the other hand, if these matters need regulation, ought this Legislature to fail in its duty to the people? I have received a great many letters since this measure was presented, calling my attention to various discriminations, overcharges, etc. I want to call your attention, briefly, to the letters of one of my correspondents, a gentleman who has written to me voluntarily, and not upon any solicitation of mine; and I will state that if I were to call his name he would be recognized by probably three-fourths of the Senators upon this floor as a man of standing in your State, a brave and gallant soldier of the Confederate war, the peer of any man in Texas in integrity, uprightness, honesty, fairness and impartiality in all matters of this sort, and he is a merchant, too. He says:

"I have never seen the business interest of a country so completely disgusted with oppressive rates of freight as our people are at this time. I will give you a few examples of how we are robbed: From Belton to Dallas, 154 miles, 53 cents per hundred, or \$106 per car; from Belton to St. Louis, only 60 cents per hundred, or \$120 per car; from Belton to San Angelo for * * * \$68 per car; from Belton to Galveston, same distance, \$40 per car. I am completely cut off in my * * * trade. I have a car * * * from * * * near Beaumont at \$103 per car; former rate \$45. If we don't get something to regulate these fellows we had better shut up shop and give them the country. It looks as if railroads were trying to show the people that they belong to them and are their masters. These are only a few of the many instances of the robbery perpetrated on our people. The business men, the farmers, the laboring men, all, all are looking to this legislature to pass some laws that will at least relieve the people of some of this oppression. From my standpoint, the railroads are not one whit better or more honest than the man who stops you on the road and takes your money, except that the former have the semblance of law on their side which permits them to rob by wholesale. I hope you, as a representative of the people, will meet this thing in a manly, firm, open and decisive way, so that something may be done."

Governor Brown, in his address before the committee of the House, went on to say that if we passed this legislation the railroad companies would have to shut up shop. I will tell you, Senators, if you do not do something of this sort the business interests of our country will have to "shut up shop."

My correspondent was a distinguished delegate in the Democratic convention, and no man was capable of understanding more intelligently the meaning of the platform adopted at Dallas, and no man in Texas stands superior to him in his devotion and allegiance to the Democratic party. He is a man who never hesitates to raise his voice in behalf of Democratic principles upon any and all occasions. Referring to that convention, he says:

“The State convention at Dallas committed itself, or at least the Democratic party, to a commission of some sort. All Democrats in the canvass pledged that they would see to this thing if elected. All farmers believe that each day the railroads are getting more defiant. Local freights are simply out of all reason and amount to an embargo on trade. I want to ship corn and oats for the farmers of this county, but the freights amount to twice the value of the products here at home. Unless some relief is given by this Legislature we are going to have serious times among our people. When good and true men get aroused and come to the front to assist in relieving the people, it is high time for our law-makers to look well to the future and to the interests of their constituency. If the Senate would look at the late freight advance and compare the rates, then see how trade has fallen off, they will see why the railroads say the roads don't pay. These fellows go before the board of equalization and swear that they can build and equip their roads for \$7,000 per mile. The same men will go before a committee and swear that it takes \$20,000 to build an average mile of road. How are you to find the truth?”

Mr. McDonald—Will the Senator from Bell yield to a question?

Mr. Tyler—Certainly.

Mr. McDonald—Do I understand the Senator to claim that the Dallas platform demanded the passage of a commission bill?

Mr. Tyler—No, sir, I do not claim that; but it called for a proper regulation of the railroads, and that was generally understood in the campaign, at least in my section, to mean a railway commission.

Local freights, says this gentleman, are out of all reason. It has already been stated here that during the drouth two years ago, while there was an abundance of corn in some portions of this State—sufficient to have supplied those drouth stricken districts—yet it could not be delivered in that section of the State, because the Kansas corn could be bought and shipped down to the Panhandle and to the Rio Grande cheaper than we could get our own corn to those places. Have not we

the right to sell to those places? Have not the factories of Texas the right to sell in Texas over the factories of Boston and New York? Yet you can not do it.

I have read these letters in opposition to claims made here that there are no complaints among the people, and that everything is happy and serene and lovely throughout the limits of our broad State. I could occupy much more time in giving instances of discrimination in rates, but I feel that I am trespassing upon the time of the Senate to dwell longer on this point.

In regard to the Democratic platform, of which my correspondent speaks, it has been stated here, and perhaps correctly, that that platform does not mean a commission, and that the commission feature was voted down at Dallas; but that proposition, fellow Senators, was only discussed in the committee on platform and never came before the Democratic convention itself. I venture the assertion that if it had arisen in the convention it would have been adopted by an overwhelming vote. I make another proposition: If this bill, with all of its features that are complained of should be submitted to the vote of the people of your State, is there a Senator who doubts the result of the contest? Is there a district, or county, or town in Texas that would cast a majority against it? I believe there are very few, if any. Then why should we falter and be afraid? Why should we fear the destruction of these great interests, when it is our duty to take the general principles of this bill, and upon them mold and perfect a measure that will be fair and just to the railroads and fair and just to the people? Why stab to death a principle of legislation supported by four-fifths of the people at large, whether you take it by districts or counties, cities or towns. Why not amend the bill, eliminate its oppressive features, but adopt the general principle.

The Senator from Lamar states in his speech, reading from Poor's Manual, quoted by Spofford, that the average cost of railroads throughout the country was \$54,103 per mile. I am told that the average assessment of railroads in Texas is \$7,000 per mile, and yet when they come here before our committees we are made believe that it costs all the way from \$20,000 to

\$40,000 per mile; and according to Poor's Manual, quoted in the Senator's argument, the average is 54,000. While I do not believe in oppressive taxes, at the same time it seems to me they are getting on the tax rolls on a very moderate basis.

The Senator from Lamar also speaks of Texas, Arizona, Utah, Mississippi, New Mexico, Nebraska, Wyoming, Montana, Dakota and Washington Territory—that the railways pay no dividends in those States and Territories, and therefore he concludes that a commission bill ought not to be passed in Texas. There is Texas in that list without any commission, various other States mentioned have no commission—with the exception of Nebraska, I believe, none of them have a commission—and yet they pay no dividends. Other States with commissions pay dividends. That has nothing to do with the argument. Commission law or no commission law has nothing to do with paying dividends upon the stock, and if it were otherwise I do not see that the capital stock is entitled to any consideration at the hands of the Legislature, because it does not represent money paid into the construction of the railroads in Texas, but that money is represented by the bonds of the company. The original stockholder has long since been closed out in the courts, by the process of foreclosure, and the shares are merely useful in voting for directors and controlling thereby the management of the road.

Another feature of this bill to which the Senator from Lamar objects is that the rules and regulations to be enacted by the commission, or the freight rates passed by the commission, shall be received as *prima facie* evidence in the courts of the country that such rates and regulations are reasonable and just. He seems to regard it as very oppressive that they should be required to go into the courts with the burden upon the railway companies of showing that they are not just, or that different rates than those prescribed are just and reasonable. I understand that the commission bills of some of the States are not so liberal as this; they say that these rules and rates shall be *conclusive* evidence. We do not go that far; we say only *prima facie* evidence, and, if they are not reasonable and just, then the railroad company has the privilege and opportunity of disproving that *prima facie* case.

The Senator also contends that this legislation would affect but very little of the tonnage of the country ; that only about one-tenth of the total volume of traffic is done *within the State*. If it is so small I do not see why the railroads should object to our regulating it, or why the opposition should be making such a fuss about it. But we are informed from intelligent railroad sources that upon that one-tenth of the tonnage of Texas—in other words, upon the local traffic of Texas—these companies make up the loss which they sustain in the transportation of the through business of the country (which is run, they say, at a loss), pay the operating expenses and all the fixed charges, including the interest upon their bonded debts. I say it stands forth as an argument that something ought to be done, if the labor, industry and products of Texas are being taxed upon one-tenth of the tonnage to pay the loss on nine-tenths, and to pay the fixed charges of the roads. Here is the unjust discrimination we complain of. In order to uphold the factories and industries of the North, nine-tenths of the tonnage representing interstate commerce, is carried at a loss, and that loss is made up on the one-tenth carried *from* points within Texas *to* points within Texas. Had you thought, when the pool assembles and makes a raise of ten per cent in their rates, what that means? It means an additional two and a half to three millions of dollars tax levied upon the industries and products of your State, more than enough to maintain the whole State government here for a year. And, yet, it is complained that the paltry sum of \$50,000 may be expended under this bill. Oh, Economy, view thy worshippers!

Let it be remembered that inside the ranks of the Democratic party the one great issue was that of railway regulation, and our platform, adopted at Dallas, spoke in no uncertain tones upon this subject. Those of us who mingled with our people in the campaign and bear our commissions fresh from them to this body, have not so soon forgotten the discussions of the hustings, nor do we intend to prove recreant to the trust reposed in us by our constituents. The sentiment of our people is not to destroy railway properties but to build up and encourage them—not to drive capital from the borders of our State, but to invite it here—by a system of laws alike fair and

just to the people and to the capitalists. But why should not Texas protect herself, as other States are doing, from extortionate freight rates, from discriminations and inequalities and injustice? Our right to do so stands upon a higher ground, if possible, than that of any other State. We have not only granted the franchise and the right of eminent domain, but to many of the roads we gave a princely estate in lands, which has served as the basis of their credit and enabled them to borrow money and build these roads without the investment of a great capital stock. Nor do I question here the wisdom of that policy, but I speak of it as evincing the unquestioned propriety, aside from the power, of restraining the exactions of railway managements.

We are met at the threshold of the question with the doctrine of "vested rights"—that having created these corporations, they have outgrown the power that created them, and have the vested right to go on in their exactions, and that no power resides in the State to molest or hinder them in so doing. I abjure all such doctrines, and will never believe in them.

It seems to me if I were a representative of those great interests, instead of resisting the demand for reasonable regulation I would meet it half-way—instead of being swept away by a whirlwind of popular prejudice I would make my peace with the elements. I would treat with the people while yet reason, conservatism and moderation sway in the councils of the country. Do corporations expect to be allowed to go on forever in the exercise of a separate existence, coequal, coordinate with the State, and not subject to State regulation—a sort of dual sovereignty? Such an idea is absurd, yet that is the logical result of the position assumed by those who question or deny the right of State regulation of corporations. Does anybody question the right of the monarchical governments of Europe to regulate railroads and all other corporate investments within their territories? The only difference is that in this country the people exercise the sovereignty instead of a crowned head.

This thing must be settled some day, and it may be done in a manner much more damaging to corporate investments than

by the simple terms of an amicable, reasonable exercise of the State's power in the regulation of our railways, and I think it would better behoove the distinguished gentlemen who have these interests in charge to come and sit with us at our council board and aid us in devising a reasonable and just system of laws, fair to the people and fair to the corporations. But they stand stubbornly and deny the power of the State to regulate their properties, and we are confronted with the naked question of who is the sovereign, the State or the railway companies? In the face of such an issue we can not afford to falter. Let the State assert the principle, exercise her power and eliminate this question from the politics of the country. Then the people and the railroads will meet on common ground of mutual interest and transact their business upon terms of equality and fairness. Otherwise, this question goes on threatening us with monopoly on the one hand and communism on the other, and we desire to avoid both if possible. The interests of the people and the railways are mutual, their duties reciprocal. There should be no conflict between them. Harmony and mutual confidence ought to prevail, and that which affects so vitally every true interest of Texas, should not be a foot-ball in our politics. We should seldom recur to it in legislation, and the commission, with proper restrictions, is the best solution of the question for all concerned.

Senators on the other side speak eloquently of the era of prosperity just ahead of us, of the influx of capital into our State in the near future, of the inauguration of great enterprises, and of the spreading out and beautifying of the cities and towns of Texas—all of which, they say, would be checked by the passage of such laws as we are now considering. All of these are desirable and will come in their own good time, and will doubtless increase the wealth of the favored few—but they will add little to the permanent comfort, happiness or prosperity of the great mass of the people, whose interests we should here seek to guard and protect. Old Rome once ruled the world by the valor of her arms and the civic virtue of her statesmen—the outgrowth of the individual manhood and the sturdy independence of her common people. With the building of her palaces and her magnificent temples to the

gods of her vanities, crouching servility supplanted the prowess of her soldiery, and patriotism gave place to apathy and national decay. Rome and her glory were swallowed up in the vortex of national excesses. A prosperous and independent yeomanry—the untrammelled owners of fruitful farms and happy firesides—assured of the full and free enjoyment of the legitimate fruits of their energy and their toils—these, Mr. President, are more to be desired as the support of a great commonwealth than the paved streets and palatial residences of great cities.

“ Ye friends to truth, ye statesmen who survey
The rich man’s joy increase, the poor’s decay,
’Tis yours to judge how wide the limit stands
Between a *splendid* and a *happy* land.”

I thank you, fellow Senators, for the attention given me, and hope I have not trespassed too long upon your patience in attempting to give you my views on the pending bill.

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